

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

KEVIN W. BROWN,)	
)	
Movant,)	
)	
v.)	No. 1:05CV00066 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Kevin W. Brown to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1].

Background

Movant pled guilty to one count of being a felon in possession of a firearm. See United States v. Brown, No. 1:01CR85(ERW) (E.D. Mo.). On June 24, 2002, movant was sentenced to 60 months imprisonment, 3 years supervised release, and a \$100 special assessment. Id. Movant did not appeal either his conviction or his sentence. The Court's records indicate that movant has not previously filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The motion

Movant alleges that his conviction and sentence are invalid because he was denied effective assistance of counsel.

Discussion

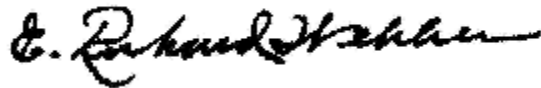
Title 28 U.S.C. § 2255 now provides that a one-year period of limitations applies to § 2255 motions. Because movant did not appeal his conviction and sentence, he had until approximately July 7, 2003, to file a § 2255 motion.¹ The instant § 2255 motion was not filed until April 25, 2005. Therefore, the instant § 2255 motion is time barred. Cf. Myers v. Vogel, 960 F.2d 750, 757 (8th Cir. 1992) (pre-service dismissal is proper where it is clear that statute of limitations has run).

In accordance with the foregoing,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [Doc. #1] is **DISMISSED**, without prejudice, as time barred.

An appropriate order shall accompany this memorandum and order.

So Ordered this 21st Day of June, 2005.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

¹Federal Rule of Appellate Procedure 4(b)(1)(A) provides that movant's notice of appeal had to be filed within 10 days after the entry of the judgment sentencing him.